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Question No.1

Describe the followings in detail:

(a). Define statute and term of interpretation of statute according to the constitution of Pakistan, 1973?

Answer:

INTRODUCTION: -

“Statutes is a formal written enactment of a legislative authority that governs an entities of a city, state or country. Typically, statute command or prohibit somethings or declare policy. The word is often used to distinguish law made by legislative bodies from the judicial decisions of the common law and the regulations issued by government agencies”.

Term and Means: -

The term “Interpretation” means “To give meaning to” or “the action of explaining the meaning of something”. And the Statutes means “Law or rules” or “a written law passed by a legislative body”.

On the basis of time duration, classification of statutes are as below:

1. **Perpetual statute:** -

“When no time is fixed for its duration and such a statute remains in force until its repeal which may be express or implied”.

2. **Temporary statute:** -

“When its duration is only for a specified time and it’s expires on the expiry of the specified time unless it’s repealed earlier”.

According to the Constitution of Pakistan, 1973:

The preamble to our constitution is important to refer and its opening para are as under:

“Whereas Sovereignty over the entire universe belongs to almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by him is a sacred trust”.

Statute are divided into following classes are:

- Codifying Statute.
- Declaratory Statute.
- Remedial Statute.

- Amending Statute.
- Consolidation Statute.
- Enabling Statute.
- Disabling Statute.

AIM AND OBJECTIVES: -

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. Governmental power has been divided into three wings are as follows:

1. Legislative power.
2. Executive power.
3. Judiciary power.

Question No. 1 (b)

How many rules of interpretation of statutes? Explain any Two.

Answer

INTRODUCTION: -

The cardinal rule applied by the judge is that the intent of the legislature is to be sought in the actual words used any they are to be understood in their ordinary and natural meaning, and this is known as “the grammatical interpretation”. Or literal rule. The main two kinds of interpretation are described the rules of interpretation that are given below:

1. Mischief Rule.
2. Golden Rule.

MISCHIEF RULE: -

A statute is to be so construed as to suppress the mischief and advance the remedy, thus giving the courts considerable latitude in achieving the objective of the legislature despite any inadequacy in the language employed by it.” *Haydon’s Case* (1584) laid out the following statement of the principles underlying what would come to be called the "mischief rule":

“For the sure and true interpretation of all statutes four things are to be discerned and considered: -

What was the common law before the making of the Act?

What was the mischief and defect for which the common law did not provide?

What remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth.

The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commode*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico* property to his cousin A B and he has two cousins of that name. This is also termed as extrinsic ambiguity. On the other hand patent ambiguity is an ambiguity that clearly appears on the face of document arising from the language itself. For example a bill of exchange is expressed in words to be drawn for two fifty dollars but in figures \$ 215 it is a patent ambiguity.

GOLDEN RULE / PURPOSIVE APPROACH: -

The purposive approach (sometimes referred to as purposivism, purposive construction, purposive interpretation, or the modern principle in construction) is an approach to statutory and constitutional interpretation under which common law courts interpret an enactment (a statute, part of a statute, or a clause of a constitution) within the context of the law's purpose. Purposive interpretation is a derivation of mischief rule set in *Haydon's Case* and intended to replace the mischief rule, the plain meaning rule and the Golden Rule. Purposive interpretation is used when the courts use extraneous materials from the pre-enactment phase of legislation, including early drafts, Hansards, committee reports, and white papers. The purposive interpretation involves a rejection of the exclusionary rule.

Israeli jurist Aaron Barak views purposive interpretation as a legal construction that combines elements of the subjective and objective. Barak states that the subjective elements include the intention of the author of the text, whereas the objective elements include the intent of the reasonable author and the legal system's fundamental values. Critics of purposivism argue it fails to separate the powers between the legislator and the judiciary, as it allows more freedom in interpretation by way of extraneous materials in interpreting the law.

Question No. 02 (a):**What are the General Principles of Interpretation of Statute?****Answer:****Introduction: -**

General principles of interpreting statutes are that the interpretation should be natural, appropriate and simple and should give the words their ordinary meaning. It should be consistent with the intention of legislature and should help the administration of justice. It should not offend the common sense. Beyond this, the methodologies and approaches taken by the courts in discerning meaning can help guide legislative drafters, legislators, implementing agencies, and private parties.

“Statutory interpretation is the process of resolving those ambiguities and deciding how a particular bill or law will apply in a particular case. The first and most important rule is the rule dealing with the statute's plain language. This rule essentially states that the statute means what it says”.

General principles: -

The term interpretation means “To give meaning to”. Governmental power has been divided into three wings namely the legislature, the executive and the judiciary. Interpretation of statutes to render justice is the primary function of the judiciary. It is the duty of the Court to interpret the law and give meaning to each word of the statute.

The most common rule of interpretation is that every part of the statute must be understood in a harmonious manner by reading and construing every part of it together. The age old process of application of the enacted law has led to formulation of certain rules of interpretation. According to Cross, "Interpretation is the process by which the courts determine the meaning of a statutory provision for the purpose of applying it to the situation before them," while Salmond calls it "the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed". Interpretation of a particular statute depends upon the degree of creativity applied by the judges or the court in the reading of it, employed to achieve some stated end. A statute can be interpreted by using the Golden Rule, the Mischief Rule or the Literal Rule.

Ambiguity: -

Ambiguity means vagueness or uncertainty of meaning the possibility of interpreting an expression in two or more distinct ways. In the context of statutory interpretation, ambiguity is used to indicate the doubt a judge must entertain before s/he can search for apply a secondary meaning. In ordinary language it is often confined to situation in which the same word is capable of two different meaning.

There are two types of ambiguity latent and patent. Latent ambiguity refers to an ambiguity that does not readily appear in the language of document but arises from a collateral matter when the documents terms are applied or executed. For example when a man devise property to his cousin A B and he has two cousins of that name. This is also termed as extrinsic ambiguity. On the other hand patent ambiguity is an ambiguity that clearly appears on the face of document arising from the language itself. For example a bill of exchange is expressed in words to be drawn for one fifty dollars but in figures \$ 115 it is a patent ambiguity.

Question No. 02 (b)

Role of interpretation of statues in legal history?

Answer: -

History: -

Statutory interpretation first became significant in common law systems, of which England is the exemplar. In Roman and Civil law, a statute (or code) guides the magistrate, but there is no judicial precedent. In England, Parliament historically failed to enact a comprehensive code of legislation, which is why it was left to the courts to develop the common law, and have decided a case and given reasons for the decision, the decision would become binding on later courts.

Accordingly, a particular interpretation of a statute would also become binding, and it became necessary to introduce a consistent framework for statutory interpretation. In the construction (interpretation) of statutes, the principle aim of the court must be to carry out the "Intention of Parliament", and the English courts developed three main rules (plus some minor ones) to assist them in the task. These were: the mischief rule, the literal rule, and the golden rule. Courts "say what the law is" by resolving legal disputes in individual cases. This is true whether a court is interpreting a positive law, such as a statute or regulation, or reasoning from a prior judicial precedent, drawing from a body of law known as the common law. With regard to the common-law tradition of making law through judicial opinions, a court reasons by example, applying general "principles of equity, natural justice, and public policy" to the specific circumstances before the court. Case by case, a common-law court decides more or less anew whether each set of circumstances should follow the rule of a previous decision. But in resolving a statutory dispute, courts generally do not simply determine, based on equity or natural justice, what would have been a reasonable course of action under the circumstances. Instead, the court must "figure out what the statute means" and apply the statutory law to resolve the dispute.

The predominant view of a judge's proper role in statutory interpretation is one of "legislative supremacy." This theory holds that when a court interprets a federal statute, it seeks "to give effect to the intent of Congress." Under this view, judges attempt to act

as "faithful agents" of Congress. They "are not free to simply substitute their policy views for those of the legislature that enacted the statute." This belief is rooted in the constitutional separation of powers: in the realm of legislation, the Constitution gives Congress, not courts, the power to make the law. The judicial power vested in the courts entails only "the power to pronounce the law as Congress has enacted it." Accordingly, courts must remain faithful to what the legislature enacted.

It was not always the case that judges described their role in statutory interpretation as being so constrained. This section broadly reviews the evolution of statutory interpretation in U.S. courts, noting the various schools of legal thought that predominated at particular periods in the nation's history. However, while these other interpretive theories no longer represent a majority view, all continue to exist in some form today, and critically, they influenced the development of the theories that do dominate modern legal theory.

Early Years: Natural Law and Formalism: -

Legal thinking in this country's early years was influenced by the idea of natural law, which is the belief that law consists of a set of objectively correct principles derived "from a universalized conception of human nature or divine justice." The goal of judges in a natural law system is to "conform man-made law to those natural law principles." Accordingly, courts looked to "the equity of the statute," seeking to find "the reason or final cause of the law" in order to address "the mischief for which the common law did not provide," but the newly enacted statute did, "and to add life to the cure and remedy, according to the true intent of the makers of the act."

A distinct, but not mutually exclusive, view of the law that gained popularity in the 19th century, formalism, posits that "the correct outcome of a case could be deduced" scientifically from fundamental "principles of common law" contained in prior cases. These early formalists believed that they could use established forms of logic, based on these fundamental common-law principles, to determine the meaning of statutory text.

Both natural law and formalism share the belief that the law provides one right answer to any question and lawmakers can discover that answer. For those who subscribe to these schools of thought, the source of this answer is neither the legislature nor the courts, but the higher principles of law themselves. When natural law and formalism dominated legal thinking, "it did not matter as much whether judges conceived of themselves as faithful agents of Congress or coequal partners in law elaboration." This is because under these theories, both courts and legislators are engaged in the same process of finding the one correct answer. And if courts discover the answer to the legal question presented, proponents of natural law and formalism contend that there is no need to defer to the legislature. Accordingly, under these theories, courts might resort to equity or reason over a strict construction of the language of the statute because this gloss on the legislative text amounts to a "correction" of a defective statute, a correction that would not have been necessary "if the original had been correctly stated." As a result, a prevalent view in the 19th century was that the judge merely said "what the legislator himself would have said had he been present, and would have put into his law if he had known."

20th Century: Rise of Legal Realism: -

Critically, then, the legitimacy of the theories that primarily governed early American jurisprudence hinged on the belief that a judge could divine the law by focusing on general principles of justice or logic. But as the school of legal realism gained traction in the early 20th century, legal scholars began to question these assumptions and called for judges to more self-consciously justify the legitimacy of their rulings. The early legal realists sought to discover "how law 'really' operated," applying new insights from the fields of sociology and psychology to judicial decision making. Legal realism led to the widespread recognition that judges sometimes make law, rather than discover it. As a result, judges more readily acknowledged that there were no "pre-established truths of universal and inflexible validity"—or at least, that they could not divine those truths and invariably derive from them the proper conclusion in any given case. For legal realists, there is "no single right and accurate way of reading one case." Accordingly, the need arose for judges to more openly justify the law that they announced in any given case.

Conclusion: -

Statutory interpretation is an important. So that no anyone is unable to make their own judgement in cases. If they stumble upon any problems, they cannot change the law therefore they cannot interrupt the flow of justice. In allows Parliament to be the law making body and court will then apply the law.

QUESTION NO 3 (a)**What is harmonious construction in statue?****Introduction: -**

Interpretation mean the remove the ambiguity and confusion in the provision of the law because the main aim of the judiciary interpretation of law and legislate the law the legislature legislates the law and judiciary interpreter the law and executive apply the law. When the any provision of law is capable for interpretation when any provision has any Ambiguity and inconsistency and incomplete that kinds of provision.

And our judicial system removes that ambiguity and interpreter the law and remove the grammatical and legal mistake

Definition of interpretation of laws: -

Interpretation mean solve the confusion and remove the ambiguity and incompleteness from any provision and make that effective that provision.

First of all we give the intro and definition the now we discuss the harmonious matter

Doctrine of harmonious construction: -

The doctrine or the rule of harmonious construction This rule of is adopted when there is a conflict between two or more statues or between the parts or provisions of the statues. As per this doctrine the courts try to avoid conflicts between the provisions of the statues. The doctrine follows a very simple rule that every statute has made for a purpose and specific intent as per law and it should be read as a whole and interpreted accordingly. Thus the provisions are so interpreted that the conflict between the two statues or its provisions is avoided and each of them is given effect.

For this purpose, the scope and meaning of one may be restricted so as to give meaning also to the other. So, the aim of the courts are:

- i. An interpretation which makes the enactment consistent.
- ii. A construction which avoids inconsistency or repugnancy between the various sections or parts of the statute. However, in the case in which it shall be impossible to harmonize both the provisions, the court's decision shall prevail.

Object of harmonious construction: -

The aim of this construction is that remove the mis gaps and confusion from different parts of statues and remove the ambiguity and make the law in position of operative condition.

When there is ambiguity in differ parts of law then on part make the nullify the other part of law then our judiciary remove the confusion and make the law valuable.

If that kind of construction not done that disturb the system of law many legal and procedural and technical issues arises therefore harmonious construction erase that all problem

Procedure to give effect to the doctrine: -

The principle of harmonious construction requires the following four steps to have an effect:

2. That both the provisions which are conflicting must be read as a whole with reference to the entire enactment in question.
3. Give full effect to both of them and then reduce the conflict.
4. Out of the two conflicting provisions choose wider and narrower scope of these two separately and,
5. From the wider provision, subtract the narrow and see the consequence. If the consequence is as reasonable as to harmonize both the provisions and it gives their full effect separately, no further scrutiny is required.

Conclusion: -

According to this doctrine the courts must try to avoid conflicts between the provisions of the statues. Statutes are drafted by the legislature and there is anticipation

of situations of ambiguity, conflicts, repugnancy, redundancy etc. In such situations, the rules of interpretation of statutes come into role and the provisions are construed so as to give maximum effect to them and to render justice to the situation at hand. The principle of harmonious construction plays a very important role in interpreting statutes and is used in many cases. It helps in simplifying complex issues and makes delivering judgment as much easier.

Therefore, like the many rules of interpretation of statutes, the importance of the rule of harmonious construction is also understood and felt by the judiciary. Thus the provisions must be so interpreted that the conflict between the two is avoided and each of them is given effect and, for that purpose the scope and meaning of one may be restricted to the extent as to give meaning to the other too.

Question No. 03 (b)

How can an ambiguity in statute removed?

Answer

Introduction: -

The ambiguity is a confusion in law which create the problem in any provision and part of law.

Which is create the difficulty in the legal and procedural and technical ways therefore our judiciary remove the ambiguity the aim of judiciary to interpretation of law therefor it is duty of court remove that kinds of ambiguity and inconsistency and incompleteness in the law.

Definition: -

An ambiguity is difficulty and confusion which create the problem in the provision and part of law.

In procedural and implementational manners the ambiguity is uncertainty which removed by the Judiciary.

History: -

Statutory interpretation first became significant in common law systems, of which England is the exemplar. In Roman and Civil law, a statute (or code) guides the magistrate, but there is no judicial precedent. In England, Parliament historically failed to enact a comprehensive code of legislation, which is why it was left to the courts to develop the common law; and having decided a case and given reasons for the decision, the decision would become binding on later courts.

Accordingly, a particular interpretation of a statute would also become binding, and it became necessary to introduce a consistent framework for statutory interpretation. In the construction (interpretation) of statutes, the principle aim of the court must be to carry

out the "Intention of Parliament", and the English courts developed three main rules (plus some minor ones) to assist them in the task. These were: the mischief rule, the literal rule, and the golden rule.

Ambiguity: -

Ambiguity means vagueness or uncertainty of meaning the possibility of interpreting an expression in two or more distinct ways. In the context of statutory interpretation, ambiguity is used to indicate the doubt a judge must entertain before s/he can search for apply a secondary meaning. In ordinary language it is often confined to situation in which the same word is capable of two different meaning.

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Conclusion: -

The conclusion of that topic is that the if ambiguity is not removed that create the problems therefore judiciary plays an important role for removal for that ambiguity and make the law valuable and operate able.

Question No. 04 (a)

Can court fill the lacunas after interpreting a statue? Discuss

Introduction: -

There are three branches of the state *first is legislature* and *second is executive* and *third is judiciary*, the legislature, legislate and make the law and the executive implements the law however judiciary done the interpretation of law.

The judiciary interpret the law not make the law tells that what is law? not what law is? the interpretation of statues is work of judiciary if our judicial system neither clear the law nor remove the micro infusing in the law, the hardworking of legislature is waste here is judiciary is work for the era of clarity of law.

Aim and object of removing the lacunas: -

The main thrust of the interpretation to less the problems in the laws and not arises the any difficulty in the procedural and legal and technical issues which vanished the rights of someone there for judiciary take care of law and remove that ambiguity and inconsistency in the law.

Duty of judicial system: -

It is the legal and constitutional duty of court to interpret the law and make the efficacy in law and valuable and clarity in the law which helps the executive to implement and not done any issues in the way of law enforcement agency, if the court not interpret the law, and not clear the rights and duty and liability of any legal person then create the bundles of difficulty in that part in court and legislature department.

How interpret the law by judiciary: -

The judiciary when consider the any case in the court then court feels that should be clear by the court then the court apply the judicial mind and solve that problems and create the principal for the next court and clear the law and ambiguity.

Which rules apply in the removal of lacunas: -

There are many rules used for removal of lacunas, every rule could be applied in different situation and plays different role and have the different result, some rule names are as under:

- a. Literal Rule.
- b. Golden rule / Purposive Approach.
- c. Mischief Rule.
- d. Harmonious construction.
- e. Ejusdem Rule.
- f. Nonsuits Rule.

That above rules can be applied for that interpretation of statues helping of that rules removal of the lacunas and make the law valuable.

Interpretation is used as precedent: -

The interpretation of the higher authorities likewise high court and supreme court is binding the lower courts and other semi judicial authorities under section Article 189 and 209 constitution of Pakistan under the doctrine of precedent.

Conclusion: -

The upper topic tells us what is interpretation and when the judiciary done that and what kinds of rules to be used and what is impotency of judiciary and constitutional at testified without interpretation law is useless and not work properly and not implement.

Question No. 04 (b)

Explain the followings

- 1) Statuary Instrument**
- 2) Unambiguous language in statute**

1. Statuary Instrument: -

Introduction: -

The statute is command of sovereignty in codification manners the statute is codified law which is legislated by the department of legislation, the legislative legislate the law and judiciary interpret the law the legislation pass the different statutes in different time which fulfills the different era of law and manners.

Object of Statutes: -

The legislation passes the statutes in codification manners and pass the law which clears the rights, duties and liabilities of any person. The statute is pass final bill situation first of all pass the national assembly after that senate and senate send for approval to the president then make the statute and that statute is interpreting in the judicial system.

Kinds of Statutes: -

There are different kinds of statutes, but jurist divided the statutes in the two parts

- i. Substantive statutes.
- ii. Adjective or procedural statutes.

i. Substantive statutes

Substantive statutes are that statute which declare the rights and duties of the any legal person that is called substantive statute.

ii. Adjective statutes

Adjective statutes which tells us the procedure how the substantive right attains by the courts. It is also called the statutes is procedural law.

Kinds of statues

- Temporary statues
- Perpetual statues
- Penal statues
- Fiscal statues
- Special statues
- Local statues

That kinds of statues are part of legal system.

Conclusion: -

The statues are codified the law which pass by legislature by way of process and judiciary interpret that statues and executive implement and statues declare the rights duties and liabilities of any person.

2) Unambiguous language: -

The unambiguous language is that kinds of language which create the any ambiguity and any confusion and any uncertainty and create the difficulty in the procedural manners and the courts remove that uncertainty in the parts of law and make the law effective if the court not remove that kinds of language the create the difficulty the courts used the differ rules for the removal of this unambiguous language .unambiguous language mean ambiguities language.

Question No.5 (a)

What do you understand by Repeal of a statue?

Answer

Repeal of Statue: -

Re-enactment can be with or without amendment, although repeal and re-enactment without amendment normally occurs only in the context of a consolidation bill (a bill to consolidate the law in a particular area).

For example, the repeal of the Poor Laws in England in 1948 reflected their replacement by modern social welfare legislation.

“For the sure and true interpretation of all statutes four things are to be discerned and considered: -

What was the common law before the making of the Act What was the mischief and defect for which the common law did not provide? What remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*

A repeal without replacement is generally done when a law is no longer effective, or it is shown that a law is having far more negative consequences than were originally envisioned language employed by it.” *Heydon's Case* (1584) laid out the following statement of the principles underlying what would come to be called the "mischief rule":

Question No.5 (b)

Describes the effects of Repeal?

Answer

Effects of Repeal: -

Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- Revive anything not in force or existing at the time at which the repeal takes effect, or Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or Affect any right, privilege, obligation or liability acquired, incurred in respect of any offence committed against any enactment so repealed, accrued or incurrent under any enactment so repealed, or Affect any penalty, forfeiture or punishment or Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

Where this Act, or any 13[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.